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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE:

Office: MIAMI

Date:

JUN 23 2009

IN RE:

APPLICATION:

Application for Certificate of Citizenship under Section 301(a)(7) of the former Immigration and Nationality Act; 8 U.S.C. § 1401(a)(7).

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on December 22, 1965 in Honduras. The applicant's parents, as indicated on his birth certificate, are [REDACTED] and [REDACTED]. The applicant's parents were married in 1962. The applicant's father acquired U.S. citizenship at birth through his father, the applicant's grandfather. He seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father.

The district director found that the applicant had failed to establish that his father had the required 10 years of physical presence in the United States prior to his birth, and therefore concluded that he did not derive U.S. citizenship under section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7).¹

On appeal, the applicant, through counsel, indicates that he has provided ample evidence of his father's physical presence in the United States. The applicant notes that the director does not dispute that the applicant's father was present in the United States from 1950 to 1958. The applicant claims that his father was also present prior to November 1949 when he "took an intelligence test." See Applicant's Brief at 3. The applicant submits an affidavit executed by his aunt, the applicant's father's sister, indicating that the applicant's father was present in the United States from 1947 to 1959.

The AAO notes that "[t]he applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth." *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9th Cir. 2000) (citations omitted). The applicant was born in 1965. Section 301(a)(7) of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1401(a)(7), is therefore applicable to this case.

Section 301(a)(7) of the former Act states that the following shall be nationals and citizens of the United States at birth:

[A] person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years: *Provided*, That any periods of honorable service in the Armed Forces of the United States by

¹ The director incorrectly cited to section 301(g). Although the requirements of sections 301(a)(7) and 301(g) were the same until 1986, section 301(a)(7) of the former Act was not re-designated as section 301(g) until the Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046.

such citizen parent may be included in computing the physical presence requirements of this paragraph.

Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7), thus requires that the applicant establish that his father was physically present in the United States for at least 10 years prior to December 22, 1965, five of which after May 22, 1947 (when his father turned 14 years old).

The record contains, in relevant part, a copy of the applicant's birth certificate, the applicant's parent's marriage certificate indicating that they were married in Honduras in 1962, the applicant's father's social security statements indicating earned income from 1956 to 1958, school records indicating attendance between 1950 and 1953, and military records evidencing service in the U.S. Armed Forces from 1953 to 1956. There is also an affidavit executed by the applicant's aunt, the applicant's father's sister, attesting to his physical presence in the United States from 1947 to 1959.

The AAO finds, based on the evidence in the record, that the applicant has failed to establish that his father was present in the United States or its outlying possessions for 10 years prior to his birth in 1965 (five of which after 1947) as required by section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7).

The AAO notes "[t]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship." *Fedorenko v United States*, 449 U.S. 490, 506 (1981). 8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. In order to meet this burden, the applicant must submit relevant, probative and credible evidence to establish that the claim is "probably true" or "more likely than not." *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989).

The AAO further notes the Board of Immigration Appeals finding in *Matter of Tijerina-Villarreal*, 13 I&N Dec. 327, 331 (BIA 1969), that:

[W]here a claim of derivative citizenship has reasonable support, it cannot be rejected arbitrarily. However, when good reasons appear for rejecting such a claim such as the interest of witnesses and important discrepancies, then the special inquiry officer need not accept the evidence proffered by the claimant. (Citations omitted.)

The only evidence in the record relating to the applicant's father's presence in the United States from 1947 to 1950 is his sister's affidavit, and the November 1949 test results. The AAO finds that the applicant's father's sister's affidavit is vague, not detailed, and not corroborated by evidence in the record. The November 1949 test results do not, as the applicant claims, indicate that his father was present prior to November 1949 (and even if so, certainly does not indicate that he was present in 1947 or 1948). The applicant therefore cannot establish that his father was present in the United States or its outlying possessions for 10 years prior to his birth in 1965 (five of which after 1947) as

required by section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7). The AAO thus finds that the applicant has not met his burden of proof and the appeal will be dismissed.

ORDER: The appeal is dismissed.